NOTES OF CASES.

Manslaughter by X-Ray Burns.—Defendant, in the case of State *v.* Lester, 149 Northwestern Reporter, 297, was indicted for manslaughter in the second degree for causing the death of a person in the course of taking an X-ray photograph. A demurrer to the indictment was overruled by the district court, and he appealed to the Minnesota Supreme Court. The indictment sets out, in substance, that the picture was taken on the assurance to the deceased that the exposure to the X-ray would do her no harm; that she relied upon defendant's assurances as a medical man and allowed the photograph to be taken; that the X-ray machine is a dangerous instrument except where skillfully operated, and that defendant placed the tube of the machine unreasonably close to the body of deceased, and failed to give her proper and requisite attention to prevent burning; that her body was so exposed for an unreasonable time, thus causing what is known as an X-ray burn, from which she died. The court takes judicial notice of the fact that X-ray machines sometimes cause serious burns, and holds that, under the statute declaring guilty of manslaughter in the second degree one who causes death by any act, procurement, or culpable negligence, the indictment is not demurrable. The court says in referring to the term "culpable negligence:" "Numerous definitions of this term may be found. 2 Words and Phrases, 1180; 1 Words and Phrases (Second Series) 1174. * * * Culpable negligence—that is, criminal negligence—is largely a matter of degree, and, as has been well said, incapable of precise definition. * * * When considered as the basis of a charge of manslaughter against a medical man or person assuming to act as such, culpable negligence exists where he exhibits gross lack of competency or inattention or wanton indifference to the patient's safety, which may arise from his gross ignorance of the science or through gross negligence in either its application or lack of proper skill in the use of instruments." The order of the lower court is affirmed.

Liability for Price of Infringing Law Books.—Some time in the year 1908 the Edward Thompson Company entered in to a contract with H. M. Pakulski for the sale of a set of the American and English Encyclopedia of Law, Second Edition. Subsequently thereto this work was held an infringement of various publications of the West Publishing Company. The final decree in the case between the two companies, which may be found in 184 Federal Reporter, 749, was offered in evidence in the action against Pakulski in support of his defense of illegality in the contract of sale. The Supreme Judicial Court of Massachusetts (Edward Thompson Co. *v.* Pakulski, 107 Northeastern Reporter, 412), while recognizing the

infringement, held that this would not constitute a defense in an action for the price, in view of the fact that defendant had not been disturbed in his physical possession of the books.

Seduction and Subsequent Marriage.—Does the marriage of a female, alleged to have been seduced, to another than the alleged seducer, bar a prosecution against the alleged seducer? This was the question in Morris *v.* State (Court of Appeals of Georgia) 81 Southeastern Reporter, 257, which the court claims, so far as it was able to ascertain, was heretofore never adjudicated. It appears that the offense was committed in May, 1911. The injured female married in July, 1912. Defendant claims that her marriage to another put it beyond his power to contract marriage with her, which under the statute would stop a prosecution for seduction, and that her marriage is therefore a bar to the action against him. The court says: "The provision which allows a seducer to repair to some degree his wrong is an anomaly in the interest of social peace. Under the terms of section 379 of the Penal Code, the law provides a city of refuge for the seducer, not dissimilar to those which existed under the Mosaic law. In the Biblical cities of refuge, the slayer was safe if he reached the city of refuge before the avenger overtook him, but if he was overtaken the provisions for a city of refuge were of no avail to him. And so, in a case of seduction, the case is even stronger; for while the provisions allowing marriage may relieve the seducer from the pains and penalties of law, the statute was primarily designed in the interest of the injured female and of helpless and hapless offspring. The privilege conferred by section 379, so far as the seducer is concerned, is a right only in a qualified sense; for it savors more of the characteristics of a pardon, which is not matter of right, but matter of grace. Of course cases may be imagined where the female alleged to have been seduced might marry so quickly as to deprive one accused of seduction of the privilege of offering marriage as a means of stopping the prosecution. In such a case there might be involved some question as to the bona fides of the offer which should be submitted to a jury. However, such is not the present case. * * * The defendant has the privilege of offering to marry only if the marriage can be legally consummated; and if he delays his proffer of marriage until it is too late, because the female has married, his condition would be the same as if he had already married at the time of the alleged seduction, or as if he had married some one else subsequently to the seduction. * * * The bona fide and continuing offer to marry, which by law stops a prosecution for seduction, must be an offer which is capable of being legally performed; otherwise it affords no defense to one accused of seduction. And, since this provision has its origin in mercy